

#387-13 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF DEMETRIO SURACE, : COMMISSIONER OF EDUCATION
EAST WINDSOR REGIONAL SCHOOL : DECISION
DISTRICT, MERCER COUNTY. :

SYNOPSIS

The Board certified tenure charges of conduct unbecoming against Demetrio Surace – a tenured physical education teacher employed by the school district since 2003 – for alleged use of racial and ethnic slurs, as well as derogatory and demeaning language directed toward his students, beginning during the 2005-2006 school year and continuing through the 2011-2012 school year. The Board alleged, *inter alia*, that respondent exhibited unbecoming conduct when he: in referring to a student, stated “this little nigger better watch out”; referred to a Hispanic student as a “spic” and a Latino student as a “mad Mexican”; called students “idiots”, “stupid”, “slow”, and “lazy”; and used inappropriate language, such as the “F” word, within earshot of students and staff. The petitioning Board sought removal of respondent from his tenured position.

The ALJ found, *inter alia*, that: teachers are required to exercise a high degree of self-restraint and controlled behavior as they are entrusted with the custody and care of children; respondent in this matter failed to uphold the implicit standards of good behavior expected of a teacher, as his remarks offended publicly accepted standards of decency; the record reflected that respondent referred to students as “nigger,” “mad Mexican,” and “spic,” as well as other demeaning names, and engaged in the use of profanity in their presence; and, despite several warnings and being given many “second chances”, respondent failed to learn from his mistakes, and continued to make inappropriate comments about race and socio-economic status to and about his students. The ALJ concluded that the Board has proven by a preponderance of credible evidence that respondent’s unacceptable behavior over a number of school years constituted conduct unbecoming a teacher; accordingly, the ALJ determined that the appropriate penalty in this matter is removal from respondent’s tenured employment.

Upon full consideration and review of the record, the Initial Decision of the OAL, and the respondent’s exceptions thereto, the Assistant Commissioner, to whom this matter was delegated pursuant to *N.J.S.A.* 18A:4-34, adopted the ALJ’s Initial Decision as the final decision in this matter. Accordingly, the respondent was dismissed from his tenured position and a copy of this decision was forwarded to the State Board of Examiners for action as that body may deem appropriate.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

November 1, 2013

OAL DKT. NO. EDU 04400-2012 S
AGENCY DKT NO. 138-5/12

IN THE MATTER OF THE TENURE :
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EAST WINDSOR REGIONAL SCHOOL : DECISION
DISTRICT, MERCER COUNTY. :

The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions and the District's reply thereto, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner¹ in reaching his determination herein.

This matter involves tenure charges alleging unbecoming conduct brought by the East Windsor Regional School District against Demetrio Surace, a physical education and health teacher in the Melvin H. Kreps Middle School. The charges allege that, over a period of approximately six years, respondent engaged in a pattern of conduct unbecoming a teaching staff member by speaking to and about students in a derogatory, demeaning and humiliating manner. Oftentimes, this involved the use of racial, ethnic, and socioeconomic epithets and stereotyping. The Administrative Law Judge (ALJ) determined that the District had sustained the charges against Mr. Surace, specifically finding that respondent had, *inter alia*, used profanity in the presence of students and referred to students by demeaning names, including "nigger," "spic,"

¹ This matter has been delegated to the Assistant Commissioner pursuant to *N.J.S.A.* 18A:4-34.

and “mad Mexican.” The ALJ determined that respondent’s proven behavior constitutes conduct unbecoming a teacher and recommended that he be removed from his tenured position.

The respondent’s exceptions substantially reiterate the substance of his post-hearing submission at the OAL, recasting the arguments therein to support his contention that there was insufficient evidence in the record to support the ALJ’s findings that respondent made various comments as alleged by the District. Therefore, the respondent argues that he is not guilty of unbecoming conduct, and he should not be removed from the East Windsor Regional School District.

The District urges the Commissioner to adopt the Initial Decision, arguing that there is ample evidence in the record to support the decision. The District emphasizes that each of the ALJ’s factual findings was based upon either respondent’s own admission that the incidents occurred as alleged, or upon the ALJ’s assessment of the credibility of the testifying witnesses.

Upon careful and independent review of the record of this matter, which includes transcripts of the hearing conducted at the OAL, the Commissioner concurs with the ALJ that the District has established that respondent is guilty of unbecoming conduct. The Commissioner finds the ALJ’s fact-finding analysis and conclusions as to the truth of the Board’s allegations, as well as the characterization of respondent’s behavior as unbecoming conduct, to be fully supported by the record and consistent with applicable law.

The Commissioner notes that a number of the ALJ’s factual findings were based upon respondent’s own admissions, and the remaining findings were rooted in the ALJ’s determinations of witness credibility. The ALJ had the opportunity to assess the credibility of

the witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.
(*N.J.S.A. 52:14B-10(c)*)

The Commissioner's considered review of the entire record – which includes transcripts of four days of hearing – provides no basis for alteration of the ALJ's factual determinations. Rather, the Commissioner is satisfied, based upon the record before him, that the ALJ appropriately measured the plausibility of content in deciding the credibility of witnesses and the proper weight to assign to testimony and documentary evidence in reaching her factual findings and conclusions.

With respect to the appropriate penalty, the Commissioner agrees with the ALJ's determination that respondent's termination from employment is warranted. In determining the discipline to be imposed in cases involving unbecoming conduct, the Commissioner considers the nature and circumstances of the incident(s) in question, the individual's prior record and present attitude, and the likelihood that the behavior in question will recur. *In re Hearing of Ostergren, Franklin School District, 1966 S.L.D. 185.*

In the instant matter, the Commissioner finds an absence of evidence on this record that would otherwise militate against the ALJ's recommended penalty of termination. There is simply no place in the public schools of this State for the cultural insensitivity and poor judgment consistently displayed by respondent. Moreover, the proven charges establish that respondent has time and again engaged in this intolerable behavior despite the District having provided ample warning and having imposed progressive discipline. On this record, the

Commissioner finds no likelihood that respondent will, in the future, eliminate his inappropriate behavior.

The Commissioner stresses that “teachers carry a heavy responsibility by their actions and comments in setting examples for the pupils with whom they have contact.” *In the Matter of the Tenure Hearing of Blasko, School District of the Twp. of Cherry Hill*, 1980 S.L.D. 987 at 1003. As such, some actions are “so foreign to the expectations of the deeds and actions of a professionally certificated classroom teacher as to raise manifest doubts as to the continued performance of that person in the profession.” (*Ibid.*) Based on the total record before him, the Commissioner finds that such is the case in this matter and the ALJ’s recommended penalty of removal is appropriate.

Accordingly, the Initial Decision of the OAL is adopted for the reasons articulated therein. The Commissioner hereby directs that Demetrio Surace be dismissed from his tenured employment with the East Windsor Regional School District as of the date of this decision. A copy of this decision shall be transmitted to the State Board of Examiners for action as that body deems appropriate.

IT IS SO ORDERED.²

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: November 1, 2013

Date of Mailing: November 6, 2013

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).